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No. 84-320

In The

Supreme Court of the United States

October Term, 1984

NATIONAL FARMERS UNION INSURANCE COMPANIES, et al.,

Petitioners,

v.

CROW TRIBE OF INDIANS, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF FOR RESPONDENTS CROW TRIBE OF INDIANS AND CROW TRIBAL OFFICIALS IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether a complaint challenging the Crow Tribal Court's assertion of civil jurisdiction over a tort suit brought by a tribal member based on an accident that took place within the Crow Reservation, states a federal claim for relief.

2. If federal courts do have such jurisdiction, whether exhaustion of the available Tribal Court remedies is required before the suit can be entertained by the federal courts.

3. Whether the Crow Tribal Court has jurisdiction over a tort suit brought by a tribal member against a local school district when the accident took place on fee lands owned by the school district within the Crow Indian Reservation, four of the nine school board members are Indian, and more than 85% of the children attending the school are enrolled members of the Crow Tribe.

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BRIEF FOR RESPONDENTS CROW TRIBE OF INDIANS AND CROW TRIBAL OFFICIALS IN OPPOSITION

STATEMENT OF THE CASE

In May of 1982, Leroy Sage, a ten year old enrolled member of the Crow Tribe, was struck by a motorcycle on the grounds of the Lodge Grass Elementary School in Lodge Grass, Montana. The land on which the school is located is owned in fee by the Lodge Grass School District and is within the exterior boundaries of the Crow Reservation.

Leroy Sage subsequently filed suit in Crow Tribal Court through his guardian, Flora Not Afraid, in September, 1982. The complaint alleged that Sage's injuries were caused by the negligent and tortious conduct of the Petitioner Lodge Grass School District No. 27 ("the School District"), specifically, the unsafe condition of the school parking lots and inadequate supervision during school hours.

Eighty-five percent of the students in the School District are Crow tribal members. The Lodge Grass school board consists of nine members, of whom four are Crow Tribal members. See Appendix A, Brief of Appellant Crow Tribe of Indians, on appeal to the United States Court of Appeals for the Ninth Circuit.

The Chairman of the School District was served with process. However, the School District did not answer or otherwise appear in Tribal Court. Accordingly, on October 19, 1982, a default judgment was entered in Tribal Court against the School District. The Tribal Court mailed a copy of the default judgment to the Chairman of the School Board on October 25, 1982. Although Crow Tribal Court procedures permit parties against whom a default judgment is taken to move to set aside such judgments within 30 days, the School District took no action in Tribal Court.

Instead, on November 2, 1982, the School District and its insurer, the National Farmers Union Insurance Companies ("National Farmers"), filed suit in the Federal District Court for Montana. Named as Defendants were the Crow Tribal Court, Eddie Roundface, Glen Birdingground and Ira Left Hand, who are Judges of the Crow

Tribal Court, and Donald Stewart, Sr., Chairman of the Tribal Council (the "tribal defendants"). The complaint challenged the validity of the Tribal Court judgment against the School District and National Farmers, alleging that the Tribal Court lacked jurisdiction over the controversy and that the constitutional rights of the School District and National Farmers had been violated by the Tribal Court action.

On November 3, 1982, the Federal District Court issued a temporary restraining order enjoining Sage from executing the Tribal Court judgment. On December 29, 1982, the District Court permanently enjoined the defendants from executing the tribal court judgment on the grounds that the Tribal Court lacked jurisdiction over the tort claim. Pet. App. 14a-27a.

On July 3, 1984, the Court of Appeals unanimously reversed. Based on the reasoning of *Santa Clara Pueblo v. Martinez,* 436 U.S. 49 (1977), as well as its own previous decisions, the majority found that the Crow Tribal Court was the proper forum for determining the extent of its own jurisdiction. Pet. App. 7a. Consequently, the majority concluded that the complaint must be dismissed for failure to state a claim for federal relief.

In a separate opinion, Judge Wright concurred in the majority's conclusion that the complaint must be dismissed, stating that his "difference with the majority does not stem from any fundamental conflict over the policies at stake." Pet. App. 11a. Although Judge Wright dissented from the holding that federal court review of tribal proceedings was precluded, he found such review to be appropriate only after exhaustion of tribal court remedies. Ex-

haustion was found to be required by the doctrine of comity and by "the federal policy of protecting and strengthening tribal institutions." Pet. App. 11a. Since the School District had not even made an appearance in Tribal Court, the available Tribal Court remedies had not been exhausted and consequently the complaint should have been dismissed. Neither the majority nor Judge Wright addressed the merits of the claim made by the School District and National Farmers that the Crow Tribal Court lacked jurisdiction over Sage's tort suit.

On August 22, 1984, petitioner school district appeared for the first time in the Crow Tribal Court, seeking to enjoin the sale of certain property which had been seized on August 1, 1984, pursuant to the default judgment. The School District also moved to have the default judgment set aside.

Following a hearing, the Tribal Court postponed the sale of the seized property and set a hearing date of September 19, 1984 for further consideration of the School District's Motion To Set Aside Default. App. to Opp. Br. 1a-7a. Further Tribal Court proceedings were continued following the August 23, 1984 and September 10, 1984 orders issued by Justice Rehnquist staying the Court of Appeals' mandate.

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SUMMARY OF ARGUMENT

The decision of the Court of Appeals for the Ninth Circuit is correct, is consistent with decisions of this Court and does not conflict with any decisions of the other circuits. Review is unwarranted, especially at this time. Granting review without requiring exhaustion of available tribal court remedies would unnecessarily impede the orderly progress of the Tribal Court proceedings, which provide ample opportunity for consideration of all of the petitioners' claims and contentions.

The Court of Appeals correctly ruled that the Crow Tribal Court is the proper forum for determining the scope of its jurisdiction, "at least in the first instance." Pet. App. 7a. The Court's decision is consistent with important principles of comity and exhaustion and with the firm federal policies supporting tribal authority over reservation matters. The Crow Tribal Court provides procedures for full and fair consideration of petitioners' claims and for appeal to a higher court. These procedures are similar to those available in a state court system and afford comparable protections for petitioners' rights. Circumvention of the Tribal Court's authority by the federal courts before the Tribal Court has had an opportunity to rule on the questions raised by the parties to the Tribal Court proceedings violates the same principles which preclude premature federal court intervention in state court proceedings. These policies and principles require that Petitioners seek recourse in the Crow Tribal Court in accordance with the decision of the Ninth Circuit Court of Appeals.

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ARGUMENT

A grant of certiorari in this case would be contrary to two separate and fundamental principles of jurisprudence. It is well established that courts must have jurisdiction to determine the scope of their own jurisdiction. *Durfee v. Duke,* 375 U.S. 106 (1963). In addition, absent certain exceptional circumstances, federal courts must exercise restraint to avoid interfering with proceedings pending in other courts. *Huffman v. Pursue, Ltd.,* 420 U.S. 592 (1975). Both of these principles support the opinion of the Court of Appeals for the Ninth Circuit.

1. The Court of Appeals was correct in ruling that federal court review of tribal court actions is precluded by this Court's opinion in *Santa Clara Pueblo v. Martinez,* 436 U.S. 49 (1977). *Martinez* involved the issue of a tribe's compliance with the Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1301 *et. seq* (ICRA), which applies most of the provisions of the Bill of Rights of the United States Constitution to Indian tribes. Even where the most fundamental rights were involved however, this Court found in *Martinez* that the Congressional intention to "protect tribal sovereignty from undue interference" would be frustrated by federal court review of the action of the tribal council. 436 U.S. at 63.

Significantly, this Court noted that tribal courts were available both to Indians and non-Indians to insure protection of their "important personal and property interests." 436 U.S. at 65. Those considerations are at least equally applicable to this case and compel the same conclusion, that federal court review constitutes an undue interference with the sovereignty of the Crow Tribe. In-

deed, considering that complaints alleging deprivations of fundamental constitutional rights by tribal officials are not cognizable in Federal Courts, it would be incongruous to hold that those same Courts can entertain suits challenging the scope of tribal court jurisdiction.

This Court has carefully and consistently guarded the crucial role of tribal courts in resolving civil disputes that arise on Indian Reservations. *Fisher v. District Court,* 424 U.S. 382 (1976); *Kennerly v. District Court,* 400 U.S. 423 (1971); *Williams v. Lee,* 358 U.S. 217 (1959). In this context, the application of the *Martinez* rationale in order to protect tribal courts from collateral attack in the federal courts is especially warranted.

Petitioners' references to *Moriana v. United States,* 450 U.S. 544 (1981), as evidence of a narrow interpretation of *Martinez,* are unavailing. *Montana* arguably may have some bearing on the permissible scope of tribal court jurisdiction. *See infra,* at 15. It has no relevance to the question of federal court jurisdiction, however, because *Montana* was brought by the United States and the Crow Tribe against the State of Montana, and was not a suit challenging the exercise of jurisdiction by tribal courts or tribal officials.

2. Assuming arguendo, that federal court review of tribal court proceedings may be authorized under certain circumstances, there remains the question of whether, as Judge Wright concluded in his concurrence, exhaustion of available tribal court remedies is a necessary prerequisite to federal court review. At this stage of the proceedings, denial of certiorari is appropriate under either the Ninth Circuit majority opinion or the concurrence, and would produce the same result. In either event, the petitioners

would be required to avail themselves of their tribal remedoes before proceeding in federal court. If petitioners obtain a favorable ruling in the tribal court, they will not have any need for federal review. If they are not satisfied with the results in the tribal court proceedings, they could then reinitiate their suit in federal court. At this point, where petitioners have made no effort even to seek tribal remedies, it is premature for any federal court to entertain their claims.

This Court has consistently recognized that federal courts should, as a matter of comity, avoid interfering in cases that are pending before the state courts. *Webb v. Webb,* 451 U.S. 493 (1981); *Trainor v. Hernandez,* 431 U.S. 434 (1977); *Huffman v. Pursue Ltd.,* 420 U.S. 592 (1975); *Juidice v. Vail,* 430 U.S. 327 (1972). This policy applies in both civil and criminal contexts where important state interests are involved, notwithstanding the existence of important federal questions and interests. *See, e.g., Huffman v. Pursue, Ltd, supra; Trainor v. Hernandez, supra.* As noted in *Huffman v. Pursue, Ltd., supra,* 420 U.S. at 604, federal restaint regarding pending state adjudications is particularly warranted because

> . . . interference with a state judicial proceeding prevents the State not only from effectuating its substantive policies, but also from continuing to perform the separate function of providing a forum competent to vindicate any constitutional objections interposed against those policies.

These principles and considerations equally require federal courts to refrain from interfering with pending procedures in tribal courts, to permit those courts to perform their vital function of peacefully resolving disputes that arise on Indian reservations. In *Santa Clara Pueblo*

v. Martinez, supra, this Court exercised judicial restraint in order to avoid interference with tribal proceedings, in accordance with the policy of preserving the "right of reservation Indians to govern themselves". 436 U.S. at 59, citing, *Williams v. Lee, supra,* 358 U.S. at 223 (1959). The interest of Indian tribes in preserving the authority of their tribal courts is a clear example of a sovereign interest justifying application of the comity doctrine in the civil context.[1]

The practical reasons for abstention, noted in *Webb v. Webb, supra,* 451 U.S. at 500, and *Huffman v. Pursue Ltd., supra,* 420 U.S. at 604, apply equally to tribal court proceedings. Judicial efficiency will best be achieved by affording tribal courts the opportunity to resolve the disputes brought before them. Indeed, prior to *Martinez,* when federal courts were reviewing complaints brought against tribal officials under the Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1301 *et. seq.,* the federal appellate courts throughout the West imposed the requirement that tribal remedies be exhausted prior to the filing of the Federal suit.[2]

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[1]In certain extraordinary circumstances, "when absolutely necessary for protection of constitutional rights," *Younger v. Harris, supra,* 401 U.S. at 45, federal intervention in state proceedings has been sanctioned. However, such intervention is permissible only in cases where "great and immediate" irreparable injury is imminet, such as where the pending state action is being adjudicated in bad faith, or the state remedies are inadequate. No extraordinary circumstances warranting intervention are present in this case.

[2]*See, e.g., Howlett v. Salish and Kootenai Tribes,* 529 F.2d 233, 239 (9th Cir. 1976); *Means v. Wilson,* 522 F.2d 833 (8th

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The principles of comity and exhaustion are particularly applicable and appropriate in this case. The Crow Tribal Court provides a forum for complete and fair resolution of the suit brought against petitioners and affords ample protections for petitioners' rights.

Petitioners were given notice of the initial complaint brought against them in Tribal Court. As is true in any Court, the validity of the service of process is not negated by the fact that the individual who was served failed to inform his colleagues of the suit. *Knox County v. Harshman,* 133 U.S. 152, 156 (1890); *Stateside Machinery Co., Ltd. v. Alperin,* 591 F.2d 234 (3rd Cir. 1979); *Expert Elec. Inc. v. Levine,* 554 F.2d 1227 (2nd Cir. 1977) *cert. denied* 434 U.S. 903 (1977); *N.L.R.B. v. Clark,* 468 F.2d 459 (5th Cir. 1972). But for their own internal lack of communication, petitioners could have appeared in the Crow Tribal Court and raised the issue of subject matter jurisdiction pursuant to Rule 7, Crow Rules of Civil Procedure (C.R.C.P.). The Tribal Court would then have had the opportunity to rule on the jurisdiction issue.

Even after the default judgment was entered against them, adequate remedies were available to petitioners in tribal court. Rule 17(d) of the Crow Rules of Civil Procedure (C.R.C.P.) provides that within 30 days of a default judgment, the party in default may move to set aside the

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Cir. 1975), *cert. denied,* 424 U.S. 958 (1976); *Janis v. Wilson,* 521 F.2d 724, 727 (8th Cir. 1975); *McCurdy v. Steele,* 506 F.2d 653, 656 (10th Cir. 1975); *O'Neal v. Cheyenne River Sioux Tribe,* 482 F.2d 1140 (8th Cir. 1973).

judgment for good cause shown. Rather than ignoring and circumventing the authority of the Crow Tribal Court by bringing suit in federal court in violation of the comity principles, petitioners could have filed a motion pursuant to Rule 17(d) C.R.C.P. and obtained a hearing on the merits of the case. Under the Orders of the Tribal Court issued on August 22, 1984, and September 19, 1984, App. to Opp. Br. 1a-7a, 13a-15a this remedy is still available to petitioners, in spite of their prior disregard for the Tribal Court.

In the event that petitioners were disatisfied with the tribal court ruling on the jurisdiction issue, or on the merits, further recourse is available within the Crow Tribal Court system. The Crow Tribal Court system, like most state court systems, is two-tiered. According to Rule 2(a), Crow Rules of Appellate Procedure, a judgment or order of the tribal court in a civil case may be appealed as a matter of right to the Crow Court of Appeals, thereby affording litigants as full and fair a resolution of their disputes as is available in state courts.

Furthermore, the requirement that petitioners assert their defenses in tribal court is consistent with and parallel to the rule that an Indian who commits a tort outside the reservation is subject to suit in state court. *See, DeCoteau v. District County Court,* 420 U.S. 425 (1975); *Mescalero Apache Tribe v. Jones,* 411 U.S. 145, 148-49 (1973). Correspondingly, where a tribal court assumes jurisdiction over non-Indian defendants with respect to an occurrence that took place on the reservation and provides a forum in which the defendants' rights can be adjudicated, there is no justification for circumventing the Tribal Court's authority to rule on the scope of its own jurisdiction, at least in the first instance.

The sole justification presented by petitioners for avoiding exhaustion of available tribal court remedies is their assertion that imposition of that requirement would be "inappropriate considering the time and resources that have been invested in resolving this federal court action." Pet.6. The only authority cited in support of this novel proposition is a district court decision issued in 1972, before this Court had applied the comity principles of *Younger v. Harris,* 401 U.S. 37 (1971), to civil suits.[3] This Court has never recognized a "time and resources" exception permitting federal courts to interfere with pending state court proceedings.

There is no justification for allowing wealthy litigants to circumvent state or tribal court jurisdiction simply by expending large sums in attempting to have their claims heard in the federal courts. The principle of comity would be totally undermined if the exhaustion of available tribal court remedies could be avoided in this manner. Failure to respond to a summons issued by a judicial tribunal should not be rewarded.

3. The merits of this case, not reached by the Ninth Circuit, involve the scope of the jurisdiction of the Crow Tribal Court. If this Court decides to grant certiorari, its review should be limited to the first two threshold issues listed *supra* at (i) involving the propriety of federal court jurisdiction. If the Court grants certiorari and reverses the Ninth Circuit's holding that the federal court suit should be dismissed, the case should then be remanded back to that Court for consideration of the merits of the

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[3]*Teamsters Pub. Emp. U. Loc. No. 594 v. City of West Point, Neb.,* 338 F. Supp. 927 (D.Neb. 1972).

petitioners' claim that the Tribal Court lacks jurisdiction over the Sage's tort suit. This disposition is consistent with the rule that this Court will not consider an issue which was not ruled on by the court below, in the absence of exceptional circumstances. *Moses H. Cone Memorial Hosp. v. Mercury Construction Corp.* 460 U.S. 1 (1983); *Singleton v. Wulff,* 428 U.S. 106, 120 (1976); *Graham v. Brotherhood of L.F. & E.* 338 U.S. 232, 237 (1949).

In addition, the interests of efficiency will be served by limiting the scope of review at the certiorari stage of this case. Briefing on the merits of the Tribal Court jurisdictional issue can be avoided if any grant of certiorari is limited to the questions addressed by the Court of Appeals' majority and concurring opinions. Moreover, as demonstrated in Sec. 4, *infra,* the issue of whether the Crow Tribal Court has jurisdiction over a tort suit brought by a tribal member regarding an accident that occurred within the Reservation does not warrant review by this Court.

4. The principle of tribal jurisdiction over reservation matters, including those involving non-Indians, has been firmly established. *Merrion v. Jicarilla Tribe of Apaches,* 455 U.S. 130 (1982); *United States v. Mazurie,* 419 U.S. 544(1975); *Konnerly v. District Court,* 400 U.S. 423 (1971); *Williams v. Lee,* 358 U.S. 217 (1959). This principle applies with special force to the resolution of reservation disputes through tribal courts. As stated in *Santa Clara Pueblo v. Martinez, supra,* 436 U.S. at 65:

> Tribal Courts have repeatedly been recognized as appropriate forums for the exclusive adjudication of disputes affecting important personal and property interests of both Indians and non-Indians.

The District Court's opinion in this case was predicated on the premise that the well-established principles stated in *Williams v. Lee, supra,* were overruled by the more recent decision of *Montana v. United States,* 450 U.S. 544 (1981). Pet. App. 23a-24a. This premise is conclusively shown to be false by this Court's subsequent reliance on the continuing vitality of *Williams v. Lee, supra,* as recently as July of this year. *See Three Affiliated Tribes v. Wold Engineering.* —U.S. —, 104 S.Ct. 2267 (1984).

Tribal jurisdiction over disputes such as this one is an essential aspect of the retained sovereign power of the Crow Tribe. "Included in this tribal power is a broad measure of civil jurisdiction over the activities of non-Indians on Indian Reservation lands in which the tribes have a significant interest." *Washington v. Confederated Tribes of the Colville Indian Reservation,* 447 U.S. 134, 152-153 (1980). *See also, Merrion v. Jicarilla Tribe of Apaches, supra,* 455 U.S. at 137, 147 n.13 (1982).

The interest of the Tribe in this particular matter is especially significant. Eighty-five percent of the students in the Lodge Grass School District are Crow Tribal members. The Lodge Grass school board consists of nine members of whom four are Crow Tribal members. *See supra* at 2. The Tribe also has a significant and legitimate interest in the health and safety of its children and in the standard of care exercised by those entrusted with the case and education of those children.

In *Washington v. Confederated Tribes of the Colville Indian Reservation, supra,* this Court determined that Indian Tribes are implicitly divested of certain sovereign

powers only where "the exercise of tribal sovereignty would be inconsistent with the overriding interests of the National Government." 447 U.S. at 153. No overriding national interest conflicts with the exercise of tribal court jurisdiction in this case. The dispute is local in nature and should be resolved according to the doctrine of *lex loci deliciti,* which requires that the conduct of a tort feasor be judged in the local forum, according to local law and custom. *See e.g., Clark v. Circus-Circus,* 525 F.2d 1328, 1329 (9th Cir. 1975).

Moreover, the exercise of tribal court jurisdiction in this case is perfectly consistent with this Court's decision in *Montana v. United States, supra.* Under the *Montana* test, tribal jurisdicton over non-Indians is limited to situations in which non-Indians have entered into a consensual relationship with the tribe or the conduct of the non-Indians "threatens or has some direct effect on the poltical or economic security, or the health or welfare of the Tribe." *Montana v. United States, supra,* 450 U.S. at 65-66.[4] Sage's tort suit directly affects three vital interests of the Tribe: the health and welfare of its children; the quality of care and education provided to those children; and the maintenance of a forum for resolving disputes which arise on the reservation.

Thus, the underlying merits of petitioners' complaint do not warrant review. This Court has repeatedly recog-

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[4]The other case cited by Petitioners which limits tribal jurisdiction, *Oliphant v. Suquamish Indian Tribe,* 435 U.S. 191 (1978), was based on concern for the Constitutional rights of the criminal defendant, and is inapplicable to the issue of civil jurisdiction. *See Washington v. Confederated Tribes of the Colville Reservation, supra,* 447 U.S. at 153.

nized and affirmed the authority of tribes over reservation matters, particularly those matters in which the Tribe has a significant interest. In this case, the interest of the Tribe is especially vital, involving as it does the welfare of the Crow children. The exercise of such jurisdiction is also consistent with other lower court decisions, e.g., *Cardin v. De La Cruz,* 671 F.2d 363 (9th Cir. 1982), *cert. denied,* 459 U.S. 967 (1982); *Confederated Salish and Kootenai Tribes, etc. v. Namen,* 665 F.2d 951 (9th Cir. 1982); *cert. denied,* 459 U.S. 977 (1982); *Knight v. Shoshone and Arapahoe Tribes,* 670 F.2d 900 (10th Cir. 1982); *Means v. Wilson,* 522 F.2d 833 (8th Cir. 1975), *cert. denied* 424 U.S. 958 (1976); *McCurdy v. Steele,* 506 F.2d 653 (10th Cir. 1975). The petitioners have not pointed to any lower court decisions which support their position on the merits of their claim that the Crow Tribal Court lacks jurisdiction over Sage's suit.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX

IN THE CROW TRIBAL COURT
IN AND FOR THE CROW RESERVATION
CROW AGENCY, MONTANA

Civ. Case No. 82-287

LEROY SAGE, a minor by
FLORA NOT AFRAID, his guardian,

Plaintiff,

vs.

LODGE GRASS SCHOOL DISTRICT NO. 27,

Defendant.

MEMORANDUM and
ORDER

The Defendants, through their counsel, Jack Ramirez, appeared before this Court on August 22, 1984, and by special arrangements, filed a document entitled "SPECIAL APPEARANCE, PREEMPTORY MOTIONS, ANSWER, MOTION TO SET ASIDE DEFAULT, AND MOTION FOR TEMPORARY RESTRAINING ORDER". A hearing was scheduled to review these motions on less than one day's notice. Said motions were filed minutes before the hearing on August 22, 1984. The Plaintiff's attorney, Clarence Belue, was notified of these motions, and was present at the hearing. After reviewing the evidence presented and the arguments of the parties, the following is hereby entered.

MEMORANDUM AND ORDER

This case has a long history which is a matter of public record, and will not be set forth in this order, in the interests of getting this order out in a timely manner. A default judgment exists against the Defendants, and certain property has been seized to satisfy this judgment against them. Pursuant the applicable Rules of Civil Procedure of the Crow Tribal Code, this property was seized under a Writ of Execution issued by this Court on August 1, 1984. A sale of this property has been properly noticed and scheduled for August 23, 1984. Said Defendants' only filing in this case to date, filed August 22, 1984, is aimed at preventing the sale of this property.

Initially, this Court must review the documents which the Defendants have chosen to file. While this Court is willing and ready to review everything pertinent to this case, certain filings are simply inappropriate at this time, and will not be accepted or reviewed at this time. Specifically, an answer to the Plaintiff's original complaint is not reviewable, and is not valid until such time as the Defendant's have set aside the default judgment.

A motion for a Rule 22 Temporary Restraining Order would also appear to be improper at this time, as there is no action pending here for a permanent injunction. (See Generally, Rule 22(a)). It should be noted, that if such an action were brought, serious questions would arise about the issue of this case being res judicata. Attacking one case by bringing a completely separate proceeding would noramally be inappropriate.

The Defendants do have a basis for requesting injunctive relief under Rule 20(c). Injunctive relief may be granted for any of the following purposes:

1. To reduce an excessive seizure, if it can be shown that the value of the property seized exceeds the value of the seizing creditor's interest and the property is subject to division;

2. To prevent the seizure of exempt property;

3. To prevent the seizure if it be shown that some illegality has occurred in the proceedings prejudicial to the judgment creditor;

4. To prevent the seizure if it be shown that the judgment has been satisfied.

(See Rule 20(c), Crow Tribal Rules of Civil Procedure)

The Defendants, through testimony presented at the August 22, 1984 hearing, proved, to the satisfaction of this Court, that certain property seized did not belong to them. Specifically, it is this Court's finding that two sets of 16 inch tire chains and one eight (8) ton jack do not belong to the School District. These items were in the Blue Ford Club Cab pickup seized, and should be immediately returned to School District officials.

Additionally, it is this Court's finding that one (1) Epson FX-100 Printer, Serial No. 481667, and one (1) monitor, Serial No. 0057735, do not belong to the School District, and should be immediately returned to School District officials. These items to be returned shall be immediately identified and delivered to the School District so that they may deliver them into the possession of the rightful owners.

The School District also presented some testimony that two (2) Epson FX-100 printers, with the Serial Nos. 481710 and 481709, might well belong to the Federal government at this time, although eventually they will belong

to the School District. Further clarification on the ownership of these printers is needed, and the Defendants shall have one week from the date of this order to submit further evidence of the ownership of these printers. Said printers shall be held out of the scheduled August 23, 1984 sale, but if further satisfactory evidence of ownership is not received in one week, a sale of these items will be scheduled.

Testimony indicated that all other items currently scheduled to be sold on August 23, 1984, are the property of Lodge Grass School District No. 27. Superintendent Larry LaCounte affirmed that only the above-noted items belonged to someone other than the School District. He did note that the Blue Ford Club Cab pickup seized was used by the High School District, but acknowledged that official registered ownership was in Lodge Grass School District No. 27.

Essentially, the above-noted property which is to be returned can be classified as "exempt" property, and the Defendants have been granted relief as to that property—it will be returned. For the remaining property, except as noted, this Court finds that it is not exempt from seizure and sale at this time.

The Defendants have set forth reasons they feel warrant the setting aside of the default judgment in this case. Unfortunately, the Defendants have been lax in presenting their motion and arguments on this issue, and only now have come before this Court, the day before the scheduled sale of the seized property. They have raised substantial legal issues which this Court will not address without a full hearing, research, and briefs by counsel.

This Court will not issue an injunction to prevent this sale on the basis of Rule 20(c). When the above-mentioned property is returned, there appears to be no basis, after review of the evidence now before this Court, to issue a Rule 20(c) injunction. This Court has been presented with a difficult factual determination less than 24 hours before a scheduled sale of property which the parties were aware of for at least 2-3 weeks. Very little evidence was presented by the Defendants in support of their lengthy arguments. The Plaintiff had very little time to prepare to respond to the Defendants allegations. Nearly all of the factual allegations the Defendants cite in support of their Motion for a Temporary Restraining Order were provable in October or November of 1982. There appears to be no reasonable explanation as to why such evidence and arguments were not presented at an earlier time when they could have been further developed and considered.

The Defendants have placed themselves in this difficult situation, and have drawn the Plaintiff through protracted litigation with very little end in sight. After careful consideration, this Court holds that it will consider the Defendants Motion to Set Aside the Default Judgement, but will not enter a Temporary Restraining Order preventing the sale on August 23, 1984. Nevertheless, because of the importance of the allegations the Defendants are raising, this Court will stay the sale on August 23, 1984, until the Motion to Set Aside the Default Judgement has been decided, if the Defendants post a satisfactory surety bond in the amount of the appraised value of the items being held for sale. Said appraised value shall be reduced by the appraised value of the items herein ordered to be returned or held from this sale.

If the Defendants wish to stay any further execution processes in this Court on the basis of the Default judgement, they shall be required to post a satisfactory surety bond in the amount of the judgement remaining after the value of the sale items has been subtracted. Such a stay would be effective until the Motion to Set Aside the Default Judgement has been ruled upon.

The above-noted stays, while not specifically authorized by the Rules of Civil Procedure, are well within this Court's equitable powers to insure that justice is received in this case. They also fall within the guidelines of Rules 17 and 18 of the Crow Tribal Rules of Civil Procedure on Default Judgements and Stays of Proceedings to Enforce Judgements. While the Plaintiff certainly has the right to expect enforcement of the default judgement, the Defendants should have an opportunity to fully present their significant reasons for setting aside this default judgement.

The parties are hereby given notice that a hearing will be held on September 19, 1984, at 10:00 A.M., at the Crow Tribal Courthouse in Crow Agency, Montana, to review all pertinent evidence and arguments on the Defendant's Motion to Set Aside the Default Judgement. The attorneys of record are hereby directed to submit briefs on this matter prior to the above-noted hearing date. They shall file a stipulated briefing schedule for this issue within four working days of this order. After the hearing on this Motion, the parties will be given an opportunity to submit proposed orders.

WHEREFORE, IS IS HEREBY ORDERED that an order be entered consistent with the above. The sale of seized property scheduled in this case for August 23, 1984,

shall be held unless action is taken consistent with the above order.

ORDERED AND SIGNED THIS 22 DAY OF AUGUST, 1984.

/s/ Tommy E. Round Face
Judge, Crow Tribal Court

/s/ Melody K. Harris
Clerk, Crow Tribal Court

(SEAL)

CERTIFICATE

State of Montana)
Crow Tribal Court) ss.
Big Horn County)

I hereby certify that this sheet and all attached sheets identified by impression of my Official Seal, are each and all true and correct copies of originals filed in my office in Crow Tribal Ct. Case. No. CIV 82-287

Witness my hand and official seal this 23rd day of August, 1984.

/s/ Melody K. Harris
Clerk of Crow Tribal Court
Big Horn County, Montana

By .....
Deputy Clerk

IN THE CROW TRIBAL COURT
IN AND FOR THE CROW RESERVATION
CROW AGENCY, MONTANA

Civ. Case No. 82-287

LEROY SAGE, a minor, by
FLORA NOT AFRAID, his guardian,

Plaintiff

vs.

LODGE GRASS SCHOOL DISTRICT NO. 27,

Defendant.

SUPPLEMENTAL ORDER

This Court hereby supplements its order of August 22, 1984, as several significant events have taken place. The Defendants apparently have applied to the United States Supreme Court for an emergency recall of the Ninth Circuit mandate which directed the Montana Federal District Court to dissolve its injunction against enforcement of this Court's judgement.

Early this morning, this Court learned that Associate Justice William Rehnquist of the United States Supreme Court had, at least temporarily, granted the Defendant's application to withdraw the Ninth Circuit's mandate. This would apparently reinstate the Federal District Court's injunction against enforcement of the existing judgement in this case.

The effect of this action is not immediately apparent, as it would appear that the United States Supreme Court, in *Santa Clara Pueblo vs. Martinez,* 436 U.S. 39 (1978), has previously stated that federal courts lack the authority to review the actions of Tribes, and hence Tribal Courts. It is also most difficult to determine the full intent and effect of this order without reviewing it.

Nevertheless, this Court wants the Defendants to avail themselves of every possible opportunity to protect their interests, if they feel they have been wronged in some way. The Supreme Court, through Justice Rehnquist, apparently intends to somehow summarily review the processes of the Ninth Circuit Court of Appeals and the claims of

the Defendants. This Court will postpone the sale of the seized property in this case, pending the review the Supreme Court is now undertaking. It is this Court's understanding that this review will take at least until September 4, 1984.

THEREFORE, IT IS HEREBY ORDERED that the sale of property seized pursuant this Court's Writ of Execution dated August 1, 1984, is hereby postponed until further orders of this Court. The Plaintiff is hereby ordered to continue his measures insuring that this property is kept in a safe, secure place, pending further orders of this Court. The parties are hereby put on notice that the requirements of the order of August 22, 1984, remain in effect, except that the scheduled sale will not be held, and further execution processes will not be ordered until further orders of this Court, as noted above.

ORDERED AND SIGNED THIS 23rd DAY OF AUGUST, 1984.

/s/ Tommy E. Round Face
Judge, Crow Tribal Court

/s/ Brenda Yarlott
Clerk, Crow Tribal Court

(SEAL)

CERTIFICATE

State of Montana)
Crow Tribal Court) ss.
Big Horn County)

I hereby certify that this sheet and all attached sheets identified by impression of my Official Seal, are each and all true and correct copies of originals filed in my office in Crow Agency Case No. Civ 82-287.

Witness my hand and official seal this
23rd day of August, 1984.

Clerk of Crow Tribal Court
Big Horn County, Montana

By Brenda Yarlott
Deputy Clerk

IN THE CROW TRIBAL COURT
IN AND FOR THE CROW RESERVATION
CROW AGENCY, MONTANA

Civ. Case No. 82-287

LEROY SAGE, a minor, by
FLORA NOT AFRAID, his guardian,

Plaintiff,

vs.

LODGE GRASS SCHOOL DISTRICT NO. 27,

Defendant.

SUPPLEMENTAL ORDER

This Court hereby supplements it's orders of August 22, 1984, and August 23, 1984, to further clarify the action needed by the Defendants to protect their interests in this case. This order is being issued in recognition of the important issues in this case, potentially affecting the school children of Lodge Grass School District No. 27, so that said School District has a clear understanding of this Court's orders.

The judgement in this cause was for $153,010.00. As the Defendants noted at the hearing on August 22, 1984, it is reasonable to assume that interest will accrue on this amount from the date of judgement, until satisfaction. Indeed, this Court ordered that interest accrue against this judgement at the rate of ten (10) per cent per annum, until this judgement is satisfied. The Defendants have indicated that they intend to pursue remedies in the United States Supreme Court, and, in fact, the United States Supreme Court has taken tentative action in this case upon the application of the Defendants. Such review by the United States Supreme Court could delay final action in this case for yet another year.

In computing the interest on this judgement from October, 1982, through October, 1985, assuming this case will be settled by October, 1985, it appears that about $45,000 in interest will accrue. Additionally, it is reasonable to assume that the Defendants have incurred about $1000-$20000 in expenses in setting up the postponed sale, and in storing the seized items to date, as well as in maintaining them in storage. Therefore this Court fixes $200,000.00 as the total amount of the surety bond the Defendants must post to completely forestall further actions to execute upon this Court's judgement of October 25, 1982.

THEREFORE, IT IS HEREBY ORDERED that the Defendants, in order to gain the relief outlined by this Court in it's August 22, 1984 order, shall post a surety bond in the total amount of $200,000.00. This amount shall be posted in cash, in a form agreed to by stipulation of the Plaintiff, *or* in a form acceptable to

this Court after a hearing in which all parties have a right to appear and present their positions on this matter. Further clarification on this matter shall be initiated by the written motions of the inquiring party.

ORDERED AND SIGNED THIS 27th DAY OF AUGUST, 1984.

TOMMY E. ROUND FACE
Judge, Crow Tribal Court

MELODY K. HARRIS
(SEAL) Clerk, Crow Tribal Court

CERTIFICATE OF SERVICE

This is to certify that the above order was duly served on the attorneys of record at their addresses or address of record by first class postage prepaid on this 27th day of August, 1984, by:
Melody K. Harris

cc. Jack Ramirez
P.O. Box 2529
Billings, Mt. 59103

personally served on: Clarence Belue
215 W. Third
Hardin, Mt. 59034

File No. CV82-287

IN THE CROW TRIBAL COURT
IN AND FOR THE CROW RESERVATION
CROW AGENCY, MONTANA

Civ. Case No. 82-287

LEROY SAGE, a minor, by
FLORA NOT AFRAID, his guardian,
Plaintiff,

vs.

LODGE GRASS SCHOOL DISTRICT No. 27,
Defendant.

ORDER

In this Court's order of August 22, 1984, the parties in this case were directed to submit a stipulated briefing schedule outlining the time each would have to submit briefs on the Defendant's Motion to Set Aside the Default Judgement. At that time, a hearing was scheduled on September 19, 1984, so that the parties could have an opportunity to present evidence on this matter. This Court received nothing further from the parties relating to a briefing schedule, and therefore on September 6, 1984, this Court issued a supplemental order outlining a briefing schedule for the parties, and reaffirming the September 19, 1984 hearing date for 10:00 A.M., at the Crow Tribal Courthouse in Crow Agency, Montana. This hearing was held as scheduled. At the time of hearing, the Defendants had not filed a brief in support of their motion. The Plaintiff did file a brief in opposition of the motion prior to the hearing. The Plaintif, through his counsel, Clarence Belue, did appear, and present his arguments against the

motion. The Defendants did not appear, although they did call and note that they would not be appearing.

The Defendants were apparently under the mistaken impression that Judge James Battin's Order, reinstating his injunction against execution on the default judgment, somehow barred this Court from hearing a motion brought by the Defendants. Clearly, Judge Battin intended the Plaintiff in this action be enjoined from pursuing execution on the default judgment issued by this Court. In his Order of September 10, 1984, Judge Battin stated:

> " . . . . . and that the individual defendants Leroy Sage, a minor, his guardian, Flora Not Afraid, their counsel, the individual defendants named above, and anyone attempting to act on the basis of Crow Tribal Court civil case 82-287, *are enjoined from executing on any judgment or selling any property by execution or pressing any claim against the plaintiffs in the above-captioned case arising from the May 27, 1982, injury to Leroy Sage.*" (Emphasis added)
>
> (NOTE: Our Defendants were the Plaintiffs in federal court)

The hearing on this date, September 19, 1984, was to consider the motion filed by the Defendants. It was not for the purpose of " . . . . execution of pressing any claim against the plaintiffs . . . . . " The Defendants' motion was still before this Court on September 19, 1984. If they did not wish it to be consideerd, they could have withdrawn their motion, or asked that it's consideration be stayed for a later date. At the time of the hearing on September 19, this Court had received nothing from the Defendants on this motion, except for the original filing of the motion itself.

This hearing was scheduled for over a month. The Plaintiff prepared for this hearing, and was present. The Court received the Plaintiff's presentation, as it seemed grossly unfair to postpone the hearing and refuse the Plaintiff's arguments when the Defendants had filed nothing to request such action.

This Court stands ready now to rule on the merits of the Defendant's Motion to Set Aside the Default Judgement, based on the information received to date. Nevertheless, this Court wishes to give the Defendants every possible opportunity in this case, and therefore, a final ruling will not be entered on this motion until after this case has received it's final review before the United States Supreme Court.

THEREFORE, IT IS HEREBY ORDERED that the above findings be entered in this case. This Court will not enter judgement on the Defendants' Motion to Set Aside the Default Judgement until final review of this case by the United States Supreme Court. If the Defendants wish to file anything further in support of their motion, it shall be their responsibility to initiate such considerations.

ORDERED AND SIGNED THIS 19th DAY OF SEPTEMBER, 1984.

LONG E. ROUND FACE
Judge, Crow Tribal Court
MELODY K. HARRIS
(SEAL) Clerk, Crow Tribal Court